IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA, Plaintiff, v. FRAZER EXTON DEVELOPMENT LP, Defendant.	)	Civil Action No.

COMPLAINT

Plaintiff, the United States of America, by the authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), alleges as follows:

NATURE OF ACTION

1. This is a civil action brought pursuant to Sections 106 and 107(a), and 113(g)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, ("CERCLA"), 42 U.S.C. §§ 9606, 9607(a), 9613(g)(2), for a judgment ordering the performance of remedial work by Defendant Frazer Exton Development LP at the Foote Mineral Superfund Site ("Site") in Chester County, Pennsylvania, and for the recovery of environmental response costs incurred by the United States in connection with the Site. The United States also seeks a declaratory judgment on liability that will be binding on any subsequent action to recover further response costs.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to 42 U.S.C. §§ 9607 and 9613(b), and 28 U.S.C. §§ 1331 and 1345.

3. Venue is proper in the Eastern District of Pennsylvania pursuant to 42 U.S.C. § 9613(b) and 28 U.S.C. § 1391(b)(2) and (c).

DEFENDANT

4. Defendant is a limited partnership under the laws of the Commonwealth of Pennsylvania.

THE SUPERFUND SITE

5. The Site is comprised of the waste materials and contaminated soil, groundwater, and surface water that are located on, and extend from, a 79-acre property located at 15 South Bacton Hill Road, in East Whiteland Township, Chester County, Pennsylvania,

6. The Site was the location of an industrial facility ("the Facility") formerly owned and operated by the Foote Mineral Company ("Foote Mineral"), and engaged in the production of chemicals and in processing a variety of mineral ores.

7. Foote Mineral purchased the Facility in 1942.

8. Foote Mineral and its corporate successors continued to own and operate the Facility after the close of World War II and until 1991, when the Facility shut down operations and its buildings were demolished.

9. As a result of operations at the Facility, groundwater at the Site is contaminated with boron, lithium, chromium, and bromate, and in a limited area, the groundwater is contaminated with organic chemicals, including benzene and tetrachloroethylene. Soils are

contaminated with petroleum hydrocarbons and waste from processing ores and minerals, as well as with low-level radiation believed to be the residual from mineral ores.

10. On November 8, 1988, EPA completed an initial investigation of the Site. On June 29, 1990, EPA entered into an Administrative Order on Consent with Foote Mineral pursuant to Section 1431(a)(1) of the Safe Drinking Water Act, 42 U.S.C. § 300i(a)(i), to conduct a groundwater survey of the area, provide an alternate drinking water source to affected area residents, and conduct a five-year monitoring program to ensure the continued safety of drinking water supplies.

11. The Defendant herein purchased the Site on November 20, 1998, with full knowledge of the contamination, and assumed liability for all environmental response actions at the Site.

12. On March 31, 2006, EPA issued a Record of Decision ("ROD"), in which EPA determined that the actual or threatened releases of hazardous substances from the Site could present an imminent and substantial endangerment to public health, welfare, or the environment, and set forth the selected remedial action for the Site. In summary, the ROD remedy provided for: (1) soil excavation and off-site disposal of radiological soils, and excavation, consolidation, and capping of other contaminated soils and waste materials, (2) long-term monitoring of groundwater, and (3) implementation of institutional controls to prevent residential use of contaminated groundwater and preserve the integrity of the remedy.

CERCLA LIABILITY

13. The Site, including its surface and sub-surface soils and water, is a "facility," within the meaning of Sections 101(9) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(9) and

9607(a).

14. The substances contaminating soils and waters at the Site are "hazardous substances," within the meaning of Sections 101(14), 101(22), 104(a), and 107(a) of CERCLA, 42 U.S.C. §§ 9601(14), 9601(22), 9604(a), and 9607(a).

15. There was a "release" or "threatened release" of hazardous substances into the environment at and from the Site, within the meaning of Sections 101(8), 101(14), 101(22), 104(a), and 107(a) of CERCLA, 42 U.S.C. §§ 9601(8), 9601(14), 9601(22), 9604(a), and 9607(a).

16. Hazardous substances were "disposed of" at the Site, within the meaning of Sections 101(14), 101(29) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(14), 9601(29) and 9607(a).

17. The Defendant is a "person," within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

18. Defendant bears liability as a person who is "the owner and operator of a vessel or a facility," within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

FIRST CAUSE OF ACTION

19. The allegations of the foregoing paragraphs are incorporated herein by reference.

20. CERCLA Section 106(a), 42 U.S.C. § 9606(a), provides that the President may direct the Attorney General of the United States to secure such relief as may be necessary to abate a condition that may be an imminent and substantial endangerment to the public health or welfare or the environment, because of an actual or threatened release of a hazardous substance from a facility.

21. Pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), the United States is entitled to such relief from the Defendant as may be necessary to abate the danger or threat to the public interest posed by the release or threatened release of hazardous substances at the Site.

SECOND CAUSE OF ACTION

22. The allegations of the foregoing paragraphs are incorporated herein by reference.

23. The United States has incurred and will continue to incur response costs, as defined in Section 101(25) of CERCLA, 42 U.S.C. § 9601(25), and authorized by Section 104 of CERCLA, 42 U.S.C. § 9604, as a result of the release or threatened release of hazardous substances at the Site.

24. The response costs were incurred and will be incurred by the United States in a manner not inconsistent with the National Contingency Plan, 40 C.F.R. Part 300.

25. Defendant is liable for response costs incurred and to be incurred by EPA in connection with the Site, pursuant to Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

THIRD CAUSE OF ACTION

26. The allegations of the foregoing paragraphs are incorporated herein by reference.

27. The United States is entitled to a declaratory judgment on liability for response costs or damages, which will be binding on any subsequent action against Defendant to recover further response costs or damages, pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), and the Declaratory Judgment Act, 28 U.S.C. § 2201.

WHEREFORE, the United States respectfully requests a judgment:

A. Ordering the performance of remedial work as set forth in the ROD and any

amendments thereto, under the supervision of EPA;

B. In the amount of all response costs incurred by the United States with respect to the Site, including pre-judgment interest;

C. Establishing Defendant's liability that will be binding on any subsequent action or actions to recover further response costs relating to this Site; and

D. Granting such other relief as the Court deems just and proper.

Respectfully submitted,

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